

# STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



INDIANA GOVERNMENT CENTER NORTH  
100 NORTH SENATE AVENUE N1058(B)  
INDIANAPOLIS, IN 46204  
PHONE (317) 232-3777  
FAX (317) 974-1629

**TO:** County and Township Assessors

**FROM:** Courtney L. Schaafsma, Commissioner

**RE:** Legislative Changes Affecting Assessment Appeals

**DATE:** July 15, 2015

This memorandum addresses recent legislation affecting assessment appeals. Please note that this memorandum is intended to be an informative bulletin and is not a substitute for reading the law.

## **I. Property Tax Assessment Appeals Fund**

On May 6, 2015, Governor Pence signed into law House Enrolled Act 1603-2015 ("HEA 1603"). Section 2 of HEA 1603 introduces IC 6-1.1-15-10.5 to allow the fiscal officer of a taxing unit to establish a property tax assessment appeals fund ("fund").

The source of money for the fund will be property tax receipts attributable to an increase in the taxing unit's tax rate caused by appeals that reduce the certified net assessed value in the taxing unit.

Money in the fund can only be used to pay for expenses the county assessor incurs in defending an appeal of property located in the taxing unit and for refunds resulting from a property tax appeal (but not a correction of error). The balance in the fund may not exceed 5% of the amount budgeted by the taxing unit in a particular year.

Money deposited in this fund is not considered miscellaneous revenue. As such, the taxing unit and the Department of Local Government Finance ("Department") must disregard any balance in the fund in determining taxing unit's tax levy, tax rate, and budget (except appropriations for funding appeals and refunds) for a particular calendar year.

Section 2 of HEA 1603 is effective January 1, 2016.

## **II. Notices to Taxing Units of Pending Appeals**

Section 3 of HEA 1603 adds IC 6-1.1-15-19 to require the county assessor to send quarterly notices to the fiscal officer of each taxing unit (including redevelopment commissions) affected by a property tax appeal.

This notice must include the following information:

- (1) The date on which a Form 130 or Form 133 was filed.
- (2) The name and address of the taxpayer who initiated the appeal.

- (3) The assessed value for the assessment date the year before the appeal, and the assessed value on the most recent assessment date.
- (4) The status of the taxpayer's appeal.

The notice may be provided in an electronic format.

Township assessors must provide the county assessor with any information the county assessor requests that is necessary in order to provide the quarterly notices.

Section 3 of HEA 1603 is effective January 1, 2016.

### **III. Agreements to Stipulate Assessed Value by Independent Appraisal**

On May 6, 2015, Governor Pence signed into law Senate Enrolled Act 423-2015 ("SEA 423"), which made several amendments to the law regarding appeals before the county property tax assessment board of appeals ("PTABOA").

#### *A. Stipulation of Assessed Value*

Section 2 of SEA 423 introduces IC 6-1.1-15-2.5, effective July 1, 2015. This section allows a taxpayer and township assessor (if applicable) or county assessor ("assessor") to enter into a written agreement to:

- (1) forego a PTABOA hearing and directly appeal to the Indiana Board of Tax Review ("IBTR").; or
- (2) stipulate to the assessed value of disputed property by way of an independent appraisal that the PTABOA will then use in its determination.

This agreement must be entered into by both parties (i.e., in writing and signed by both parties) within 120 days after the taxpayer's notice of review was filed. Note that this agreement will not prohibit a taxpayer and assessor from resolving issues regarding the assessed value or deductions in an informal conference under IC 6-1.1-15-1(i). When the agreement is made, the assessor must immediately forward the agreement to the PTABOA.

The agreement must include the following seven provisions:

- (1) The PTABOA must select three Indiana registered appraisers as potential appraisers to conduct an independent appraisal.
- (2) No later than 15 days after the PTABOA chooses the appraisers, the taxpayer and assessor may each strike one appraiser from the list of potential appraisers by providing written notice to the PTABOA of the name of the appraiser the party chooses to strike.
- (3) No later than 60 days after the date of the agreement, an independent appraisal must be conducted. If both the taxpayer and assessor have chosen to strike an appraiser from the PTABOA's list of potential appraisers, the remaining appraiser shall perform the appraisal. If only one or neither of the parties has chosen to strike an appraiser from the list—that is, there are two or three appraisers who were not struck from the list—then the PTABOA will choose the appraiser who will perform the appraisal.
- (4) The appraisal must be
  - (a) performed in accordance with the usual and customary professional standard for an Indiana registered appraiser;
  - (b) notarized; and
  - (c) filed with the PTABOA no later than three days after the appraisal is completed.

- (5) The taxpayer and the assessor stipulate for purposes of review by the PTABOA that the correct assessed value is the appraised value as determined by the appraisal.
- (6) The taxpayer and assessor retain the right to initiate a proceeding to review the stipulated determination before the IBTR.
- (7) Any other provision that the Department considers appropriate.

When the PTABOA receives the completed appraisal pursuant to the agreement, it must enter a stipulated determination of assessed value:

- (1) based on the agreement of the parties; and
- (2) equal to the appraised value of the property determined by the appraisal.

Again, the taxpayer or assessor may petition the IBTR for review of the stipulated determination. (Section 1 of SEA 423 amends IC 6-1.1-15-1, effective July 1, 2015, so that if the PTABOA's determination is in the form of a stipulated determination, notice to the parties must be given no later than 30 days after entry of the stipulated determination.)

The standard form agreement the Department has been required by IC 6-1.1-15-2.5 to prescribe can be found at <https://forms.in.gov/Download.aspx?id=12353>. The agreement must be notarized.

#### *B. Annual Reports of Appeal*

Section 4 of SEA 423 introduces IC 6-1.1-28-12, which requires each PTABOA to submit a report to the Department, IBTR, and Legislative Services Agency ("LSA") before April 1 annually (the report to LSA must be in an electronic format under IC 5-14-6). This report documents the notices for review filed with the PTABOA for the preceding year. This statute applies beginning January 1, 2016.

The report must include the following information:

- (1) The total number of notices for review filed with the PTABOA.
- (2) The notices of review, either filed or pending during the year, that were resolved during the year by a preliminary informal meeting.
- (3) The notices of review, either filed or pending during the year, in which a hearing was conducted during the year by the PTABOA.
- (4) The number of written decisions issued during the year by the PTABOA.
- (5) The number of notices for review pending with the PTABOA on December 31 of the reporting year.
- (6) The number of reviews resolved through a preliminary informal meeting that were resolved
  - a. in favor of the taxpayer;
  - b. in favor of the assessor; or
  - c. resolved in some other manner.
- (7) The number of reviews resolved through a written decision issued during the year by the PTABOA that were resolved
  - a. in favor of the taxpayer;
  - b. in favor of the assessor; or
  - c. resolved in some other manner.

The report may not include any confidential information.

The Department is working with IBTR and LSA to develop a standard report that will be submitted electronically to all three entities. Further information on this report will be provided as details are finalized.

#### *C. Notices of the PTABOA Hearing*

Section 5 of SEA 423 amends IC 6-1.1-28-6, effective January 1, 2016, concerning the publication requirements for notice of the annual session of the PTABOA. Now notice must be published in two newspapers of general circulation published in the county (or one if there is only one published within the county) and posted on the county assessor's website.

Notice must still be given two weeks in advance of the first PTABOA meeting.

(Sections 3 and 6 of SEA 423 make technical changes to IC 6-1.1-25-4.1 and IC 6-1.1-28-8, respectively.)

### **IV. Admission of Appraisal Reports as Evidence**

On April 17, 2015, Governor Pence signed Senate Enrolled Act 467-2015 into law ("SEA 467"). Effective July 1, 2015, SEA 467 amends IC 6-1.1-15-4 so that at a hearing before the IBTR, the IBTR must admit into evidence an appraisal report, prepared by an appraiser, unless the appraisal report is ruled inadmissible on grounds besides a hearsay objection. This exception to the hearsay rule is not to be construed to limit the discretion of the IBTR, as trier of fact, to review the probative value of an appraisal report.

### **V. Miscellaneous**

#### *A. Senate Enrolled Act 436*

On May 6, 2015, Governor Pence signed Senate Enrolled Act 436-2015 ("SEA 436") into law, which makes numerous changes to the assessment appeal process.

##### *1. Statement of Appeal Rights*

Section 12 of SEA 436 amends IC 6-1.1-15-1, effective upon passage of the bill, so that the assessing official must attest on Form 134 ("Joint Report by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting") that the official described to the taxpayer the taxpayer's right to a review of the issues by the PTABOA and the taxpayer's right to appeal to the IBTR and Tax Court. The Department plans to update Form 134 to reflect this new requirement.

##### *2. Agreement to Waive Appeal Rights in TIF Districts*

Section 13 adds IC 6-1.1-15-1.5, which allows a taxpayer to have a written agreement with an entity authorized to establish an allocation area ("TIF district") whereby the taxpayer waives the right to appeal the assessment of the taxpayer's property in the allocation area. The Department has issued a separate memorandum on this topic, which is available here: [http://www.in.gov/dlgf/files/pdf/150518 - Schaafsma Memo - Legislative Changes Affecting TIFs and Certified Technology Parks.pdf](http://www.in.gov/dlgf/files/pdf/150518_-_Schaafsma_Memo_-_Legislative_Changes_Affecting_TIFs_and_Certified_Technology_Parks.pdf).

### *3. Appeals of Classification of Property*

Section 14 of SEA 436 introduces IC 6-1.1-15-17.1 concerning the burden of proof in an appeal over the reclassification of real property. This amendment is effective retroactive to March 1, 2015. In the case of a change occurring after February 28, 2015 in the classification of real property:

- (1) the county assessor or township assessor must, on the notice required by IC 6-1.1-4-22 (Form 11), specify any changes in land classification and the reasons for the change; and
- (2) the county assessor or township assessor making the change in the classification has the burden of proving that the change in the classification is correct in any review or appeal under IC 6-1.1-15 and in any appeals taken to the IBTR or Tax Court.

### *4. Application of Credits to Refunds \$100,000 or More*

Section 19 of SEA 436 introduces IC 6-1.1-37-14, effective upon passage of the bill. This new statute applies to refunds resulting from appeals for the 2014 assessment date or any prior assessment date. If upon conclusion of the appeal the total amount of property taxes owed to the taxpayer is \$100,000 or more, the auditor may, instead of a refund, elect to apply credits in equal installments to future property tax installments for the property over a period of not more than five years following the date of the conclusion of the assessment appeal. The auditor may elect to accelerate credits or to provide a full or partial refund within the five year period. This framework does not apply if any refund for a property under appeal has been paid before May 1, 2015. All other provisions of IC 6-1.1 apply regarding the payment of refunds and application of credits. This statute expires December 31, 2019.

### *5. Settlement of Appeals*

Section 21 of SEA 436 introduces IC 6-1.5-3-4.5, effective upon passage. Under this statute, IBTR must recommend that parties to an appeal pending before the IBTR as of May 1, 2015 (and that has not yet received a hearing) settle or mediate that appeal. This statute only concerns appeals where:

- (1) the taxpayer's appraisal asserts a value that is more than 25% lower than the value evidenced by the assessor applying the cost approach, less depreciation and obsolescence; and
- (2) the taxpayer or the taxpayer's representative appeared before the PTABOA when the appeal was heard by the PTABOA.

The Department and IBTR may adopt emergency rules to implement this statute.

### *B. House Enrolled Act 1388*

On May 6, 2015, Governor Pence signed into law House Enrolled Act 1388-2015 ("HEA 1388"), Section 15 of which amends IC 6-1.1-15-1 concerning assessment appeals. First, Section 15 amends IC 6-1.1-15-1 to include "a determination concerning a common area under IC 6-1.1-10-37.5" among the bases upon which a taxpayer may seek review by the PTABOA. Section 15 also amends IC 6-1.1-15-1 to require the PTABOA to mail notice of the date, time, and place of the PTABOA hearing to the tax representative in addition to the taxpayer and local assessing official. These changes were effective upon passage of the bill.

### **Contact Information**

Questions may be directed to Staff Attorney David Marusarz at (317) 233-6770 or [dmarusarz@dlgf.in.gov](mailto:dmarusarz@dlgf.in.gov).